



PUBLIC NOTICE

Federal Communications Commission
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DA 04-731

Released: March 18, 2004

WIRELESS TELECOMMUNICATIONS BUREAU, MOBILITY DIVISION

SEEKS COMMENT ON WARREN C. HAVENS' REQUEST FOR WAIVER OF MULTILATERATION LOCATION AND MONITORING SERVICE FIVE-YEAR CONSTRUCTION REQUIREMENT

Comment Date: April 7, 2004

Reply Comment Date: April 19, 2004

On December 3, 2003, Warren C. Havens (Havens) filed a Request to Waive the five-year construction requirement for his multilateration Location and Monitoring Service (M-LMS) Economic Area (EA) licenses (Waiver Request).¹ Havens notes that his construction deadline is July 14, 2004, but that there is no equipment presently available, which would enable him to meet that deadline.

In support of his Waiver Request, Havens argues that M-LMS systems are unique because they must operate within particular parameters, such as co-existing with operations authorized under Parts 15 and 97 of the Commission's rules,² and that the development of commercially viable location technology to operate M-LMS systems has progressed slowly. Havens states that he is actively attempting to remedy the lack of equipment. Havens also states that the unique attributes of M-LMS are similar to other services for which the Commission has not adopted an intermediary five-year construction requirement (e.g., Wireless Communication Service) and only adopted a ten-year requirement. Havens contends that M-LMS shares certain characteristics with such services, including an undeveloped equipment market, unique operating requirements, and the promise of new and innovative services and, therefore, warrants similar treatment.

M-LMS EA licensees are required to provide multilateration location service to at least one-third of the EA's population within five years of initial license grant, and to at least two-thirds of the population within ten years of initial licensing.³ Havens requests that the Commission waive the five-year construction requirement in full, *i.e.*, only require him to meet the ten-year construction requirement.

¹ See Universal Licensing System file number 0001534267.

² See 47 C.F.R. § 90.361.

³ In the *LMS Second Report and Order*, the Commission eliminated the one-year M-LMS construction requirement and established the requirement that M-LMS EA licensees must "construct and place into operation a sufficient number of base stations . . . to provide multilateration location service to one-third of the EA's population within

Interested parties may file comments on the Waiver Request on or before April 7, 2004. Parties interested in submitting reply comments must do so on or before April 19, 2004. All comments should reference the subject request including the DA number of this Public Notice, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-325, Washington, D.C. 20554.⁴ A copy of each filing also should be sent to: (1) Qualex International, Inc., Portals II, 445 Twelfth Street, S.W., Room CY-B402, Washington, D.C. 20554; (2) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center (RIC), 445 Twelfth Street, S.W., Room CY-B529, Washington, D.C. 20554; and (3) Paul Noone, Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division, 445 Twelfth Street, S.W., Room 6223, Washington, D.C. 20554.

The Waiver Request and responsive comments and reply comments will be available for inspection and duplication during regular business hours in the Reference Information Center (RIC) of the Consumer Information Bureau (CIB), Federal Communications Commission, 445 Twelfth Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies may also be obtained from the Commission's duplicating contractor, Qualex International, Inc., Portals II, 445 Twelfth Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com. For further information regarding the public reference file for this request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Because of the policy implications and potential impact of this proceeding on persons not parties to this request, we believe it would be in the public interest to treat this matter as a permit-but-disclose proceeding under the *ex parte* rules, *see* Sections 1.1200(a) and 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206, rather than a restricted proceeding under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Therefore, any *ex parte* presentations that are made with respect to the issues involved in the subject request, subsequent to the release of this Public Notice, will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

Action by the Chief, Mobility Division, Wireless Telecommunications Bureau.

FOR FURTHER INFORMATION CONTACT Paul Noone, Mobility Division, Wireless Telecommunications Bureau at (202) 418-7945, TTY (202) 418-7233 or via email to paul.noone@fcc.gov.

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five years of the initial license grant, and two thirds of the population within ten years." In the Matter of Amendment of Part 90 of the Commission's Rules to adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15197-98 ¶ 30 (1998) (*LMS Second Report and Order*). Although sections 90.155 (d) and (e) pertain to construction requirements including deadlines for LMS-M licenses, these sections were not amended to reflect the Commission's decision in the *LMS Second Report and Order*.

⁴ The address for FCC filings should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).